



Royal Courts of Justice
Belfast, BT1 3JF

15th June 2021

Dear Chair,

PAC Report 'Speeding Up Justice'

I am writing in response to your letter dated 1 June in which you have asked for my views on timeliness in the Crown Court system, and in particular the number of adjournments, which was discussed at the PAC's oral evidence session regarding its enquiry into the NIAO's report. I am very happy to share my views with you as it has always been my view that while the judicial independence is a key tenet in our democracy it does not mean judicial isolation. I acknowledge and value the importance of working collaboratively within the Criminal Justice Board to improve the performance of the justice system.

I understand that you have also written to the Department and that they have provided further information and statistical detail. However I have set out below those aspects that I think may be helpful.

You will have heard about the response to the NIAO report's recommendations and how they were addressed by the Board, including for example the appointment of Case Progression Officers to provide administrative support to the judiciary. I also introduced Crown Court Case Performance Groups, chaired by the Crown Court judges and supported by departmental officials, to address local performance issues and embed initiatives such as the Indictable Case Process (ICP). You may know that I commissioned the ICP initiative as I recognised that weaknesses in the system were particularly at the early stages of the criminal justice process. The Crown Court Liaison Committee, chaired by the senior Crown Judge and involving both the prosecution and defence representatives, similarly looks at what work needs to be done to improve performance. It introduced a revised Case Management Practice Direction in November 2019, which is supplemented by a number of protocols particularly around supporting vulnerable victims, witnesses and defendants. A number of training events followed to ensure understanding and application.

While the nature of cases coming before the Crown Court are undoubtedly becoming more complex, these and other initiatives being taken across the system were making inroads and improving performance. ICP focussed on early engagement between the prosecution and defence representatives, a model that is a cornerstone for committal reform, something I have been pressing for since 2012. It is the single most important initiative that must be implemented.

The Committal Reform Bill, currently before the Assembly, is key to tackling avoidable delay. You may know that I had written recently to the Justice Committee to commend the new Bill to them. I enclose a copy of that letter for your information which hopefully sets out the anticipated benefits for the system and also for victims and witnesses, who will no longer be at risk of having to give their evidence other than at a trial. Early engagement between the prosecution and the defence, with oversight by Crown Court judges, addressing what the issues are and what evidence is necessary to shape a case for hearing presents a real opportunity to improve performance.

You will have heard from the witnesses to the PAC that there are a number of reasons for adjournment and how the case came before the court is influential in that regard. It is of course incumbent on all those involved to ensure that there are no needless hearings resulting in an adjournment and that victim and witness attendance is limited to hearings where they are necessarily required. Cases can be listed to facilitate preparatory applications for, for example, special measures and disclosure. Increased administrative support through the Case Progression Officers assist where there is potential for case management to be handled out of court and the judiciary are mindful of the importance of using court time effectively.

While the management information will show that the number of ineffective trials has reduced and that timeliness of Crown cases at Stage 5, first appearance to disposal has improved, Covid has of course impacted on performance and it is likely that it will take some time to address the outstanding backlog. I have led engagement with NICTS, the Prosecution Service and representatives from the legal profession to ensure we can increase crown court capacity and address the backlog as effectively as possible. The number of courts that can facilitate jury trials are now returned pre Covid levels, and a further two Crown courts are to be made available in the autumn.

There remains much to be done but I am hopeful that with continued collaboration across the system, to embed those initiatives that we know improve performance, and the commencement of committal reform, that avoidable delay will be minimised and the impact on victims and witnesses reduced.

Yours sincerely
William

William Humphrey MBE MLA

Chairperson

Public Accounts Committee

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Royal Courts of Justice
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30 March 2021

Dear Paul,

Committal Reform

Many thanks for your letter, dated 9 March 2021, seeking my view and comments on the proposed changes to the committal process. You have particularly noted the contrast in the views expressed to date by the Public Prosecution Service, and those who provide support to victims and witnesses, with those expressed by the legal profession.

When we met on 18 February 2021 I noted that committal reform is something I have been pressing for since 2012. I consider it vitally important. It is well known that presenting evidence in court can be a distressing and intimidating experience for victims and my understanding is that this aspect is acknowledged and recognised. The committee will know that Sir John Gillen's review of the handling of serious sexual offences highlights the detrimental impact on victims and the consequential risk of deterring complainants when faced with significant delay and the prospect of having to give evidence at both the magistrates' court and at the crown court trial.

Enabling direct committal will give a victim or witness clarity that they will only be required to give evidence at the trial and I consider it will help speed up the most serious criminal cases. Each of these issues is central to ensuring confidence in the justice system.

I understand that the Public Prosecution Service has noted, in evidence to the Committee, that there is a view that requiring oral evidence at committal may, on occasion, be used as a tactic to see whether victims are sufficiently resilient to withstand the pressure this creates. That is a concern that a number of my judges have also expressed. Causing unnecessary stress is not acceptable. Facilitating oral evidence at the magistrates' court also delays cases progressing to the Crown court as additional court time is necessary, over and above the normal listing arrangements.

I consider that it is difficult to sustain any argument for retention of the current committal process, where you might eliminate one or two cases, when that process is pitched against a system that risks an injurious impact on victims and added delay in case progression, which affects the victim, witnesses and defendants, who may spend a significant period of time in custody awaiting trial.

It may be helpful to take into consideration the different roles of the two courts. The judge's role at the magistrates' court is limited to overseeing the readiness of papers for committal before determining if a prime face case is established and that a defendant/s should be committed to the crown court. The judge has no responsibility or legislative authority to control how the case is presented when it comes to trial.

In contrast, if the case were before the Crown Court judge, at the earliest stage, the judge can look at what the issues are and what evidence is necessary to shape the case for hearing. Currently issues such as disclosure of evidence etc. only begin to be formulated when the case reaches the Crown Court. The period in the magistrates' court is essentially lost as there is no obligation on parties to work together to bring a case to trial and additional work may be undertaken that adds limited value to the case.

Working with the criminal justice organisations I have tried to introduce the principles of early engagement for a limited group of offences, through an Indictable Cases Pilot. It has demonstrated that the time taken to conclude cases could be significantly reduced. Committal reform provides the legislative framework for those principals to be established and embedded.

Much has been said about the risks of transferring the current delays in the investigative stages to the Crown Court. However, it is my view that this is not a substantive risk if properly managed. The importance of early engagement to narrow the issues and ensure efficient and timely progress cannot be underestimated. Interrogating digital devices, for instance, is best achieved by parties working together to determine an agreed set of algorithms to find evidence. Or, if for example a defendant accepts that they were at the scene but counters the events that unfolded, early engagement can ensure that it would not be necessary for forensic or other evidence of his/her presence to be gathered. Similarly, where there is likely to be a requirement for expert evidence a Crown Court judge can ensure, at an early stage in the investigative process, that a collaborative and proportionate approach is adopted.

Consequential changes have been considered and provided for, such as incorporating safeguards for defendants who want to challenge the case against them. Changes will be required within the legal aid framework to facilitate engaging counsel at an early stage so that a Crown Court judge can ensure the defendant is fully represented and that there is appropriate focus on the key issues and that investigative time is used effectively. When we met I also explained how the judiciary would develop new targets to reflect the revised arrangements. We also discussed how there is potential for these to be aligned with those considered by the Policing Board and the Prosecution Service to front load the system effectively and deliver on a shared commitment to minimise the impact on those involved, reduce the time taken to progress a case to its conclusion and ensure savings are ultimately made.

I hope this is helpful and informs your consideration of the committal reform proposals. It is a complicated process and my officials have worked closely with the department and representatives from the other justice organisations to ensure that the current proposals are fit for purpose and I endorse them to you.

Yours sincerely,



The Right Honourable Sir Declan Morgan
Lord Chief Justice of Northern Ireland

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